IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.829 OF 2001

IN

WRIT PETITION NO.2461 OF 1999

Shri.Tulsiram K.Gothad. ...Appellant

vs.

1.The Superintendent
Mahatma Gandhi Memorial Hospital
and another. ...Respondents.

Mr.S.N.Deshpande, for Appellant.

Mr.M.M.Varma with Mr.Rajesh Gehani, for Respondent no.1.

CORAM: D.K.DESHMUKH &

J.H. BHATIA, JJ.

DATED: 3rd October,2007.

P.C.:-

1. By this appeal, the appellant challenges the order dated 23.2.2001 passed by the learned Single Judge of this Court in Writ Petition no.2461 of 1999. That writ petition was filed by the present appellant challenging the order dated 31.3.1999 passed by the Industrial Court, Bombay in complaint (ULP) no.1209 of 1997. That complaint was also filed by the present appellant and by the order dated 31.3.1999 that complaint was dismissed. The facts that are necessary and relevant for deciding this petition are that the respondent no.1 runs a hospital. The board of management has framed service regulation called “Mahatma Gandhi Memorial Hospital Service Regulations”. The appellant submitted an application for employment under the respondent no.1 on 7.6.1962. By the appointment order dated

25.6.1962 he was appointed as plumber at the hospital of the respondent no.1. Clause (4) of the appointment order reads thus:-

> "4. His conditions of service under the Board of Management will be governed by the rules framed and to be framed hereafter by the Board."

A letter dated 31.10.1997 was issued by the respondent no.1 to the appellant that he will retire from the services of the respondent no.1 on completion of age of 58 years on 31.1.1998. After receiving this letter dated 31.10.1997, the appellant filed complaint before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971 claiming that the conduct of the respondent no.1 of issuing retirement notice dated 31.10.1997 amounts to unfair labour practice under item nos.5, 9 and 10 of Schedule IV of the Act. It was the case of the

complainant that the model standing orders are applicable to the establishment of the hospital of the respondent no.1 and according to the model standing orders, the age of retirement of the employees is 60 years, and therefore, the respondent no.1 cannot retire the appellant before he completes the age of 60 years. The complaint was resisted by the respondent no.1. According to the respondent no.1, so far as the age of retirement of the appellant is concerned, it is governed by the service regulations framed by the respondent no.1. According to the service regulations, the age of retirement of class III employees is 58 years. The appellant is a class III employee and therefore, his age of retirement is 58 years. It was claimed that the age of retirement of the appellant will not be governed by the model standing order because the terms contained in the appointment order that the conditions of the services of the appellant would be governed by the Service Regulations, is an

agreement and the Service Regulations provides 58 years as the age of retirement. It appears that the parties led documentary as well as oral evidence. The complaint was decided, as referred to above, by the Industrial Court by order dated 31.3.1999. The Industrial Court dismissed the complaint. That order was challenged in Writ Petition no.2461 of 1999. The learned Single Judge has dismissed that petition by order dated 23.2.2001. This appeal is therefore, directed against both those orders.

2. The learned Counsel appearing for petitioner relying on the judgment of the learned Single Judge of this Court in the case “Engineering Workers' Association Vs. J.D.Jamdar, Member Industrial Court & others, 2004 III CLR 315” submits that as the agreement between the employer and the employee does not provide for higher age of retirement than the age which is prescribed by the Model Standing Order no.27 the

age of retirement provided by Model standing order no.27 will be applicable, and therefore, the appellant could not have been retired at the age of 58 years. He also relies on the judgment of another learned Single Judge of this Court in the case “The Indian Tobacco Company Ltd. Vs. The Industrial Court & ors., 1990 ICLR 88”. The learned Counsel further submits that even if it is assumed that by the appointment order a contract of employment was brought about between the appellant and the respondent no.1 about the age of retirement, that contract is void because it is opposed to public policy. He relies on the judgment of the Supreme Court in the case of “Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguli & Anr., 1986 II CLR 322. On behalf of the respondent no.1 on the other hand it is submitted that it is clear from perusal of the model standing order no.27 that the age of retirement of the appellant may be 60 year, but that age of retirement can be 60 years

only if there is no contract to the contrary between the parties. Relying on the judgment of the Division Bench of this Court in the Case of “Pune Minicipal Corporation & Ors. Vs. Dhananjay Prabhakar Gokhale, 2006 II CLR 105”, it is submitted that in view of what is contained in clause 32 of the Model Standing Orders the terms in the contract between the parties will prevail over the provisions of the Model Standing Orders like Model standing order no.27.

3. There is no dispute between the parties that because of the condition no.4 of the appointment order quoted above, the conditions of the service of the appellant were governed by the Service Regulations framed by the respondent no.1. There is also no dispute that according to those Service Regulations so far as class III employees like appellant are concerned, the age of retirement is 58 years. The appellant, however, relies on Model standing order no.27

which reads as under:-

> “The age for retirement or superannuation of the workman may be sixty years or such other age as may be agreed upon between the employer and the workman by any agreement, settlement or award which may be binding on the employer and the workman under any law for the time being in force.”

Perusal of the above Model standing order itself shows that it prescribes 60 years as age of retirement if some other age of retirement is not agreed upon between the employer and the workmen by any agreement or settlement or award which may be binding on both the parties. Thus, the age of retirement is prescribed by the Model Standing Order no.27 as 60 years only if there is no contrary provision to be found in an agreement between the parties. It is thus clear that the moment it is shown that there is an agreement

between the parties which is binding on both the parties prescribing different age of retirement then the Model Standing Order no.27 will not operate because of the language in which the Model standing order has been couched. Though the position on reading of model standing order no.27 is absolutely clear, the complication is created by the judgment of the learned Single Judge of this Court in the case of “Engineering Workers' Association Vs. J.D.Jamdar, Member Industrial Court & others, 2004 III CLR 315” referred to above. In that judgment the learned Single Judge has considered two clause of model standing orders i.e. Clause 27 and clause 32 and has made the following observations in paragraphs 11 and 12:-

> “11. Before embarking on the submissions made by the learned Counsel for the parties, it would be advantageous to set out the provisions of the Model Standing orders. Model Standing order 27 as applicable to the manual and

supervisory staff reads as under:-

27. The age of retirement or superannuation of the workmen may be sixty years or such other age as may be agreed upon between the employer and the workmen by any agreement, settlement or award which may be binding on the employer and the workmen under any law for the time being in force.

Standing order no.32 reads as follows:-

32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.

12. Similar standing orders are applicable to the workmen employer for clerical or supervisory work. The Standing Order 27, therefore, stipulates that the age of retirement should be 60 years or such other age as may be agreed upon

between the employer and the workmen by any agreement, settlement or award. If the submission of Mr.Talsania is correct that any age could have been the retirement age, there was no need for the Legislature to stipulate the age of 60 years in the Standing Order 27. This has obviously been done in order to ensure that the retirement age of the workman is at least 60 years. Any settlement or agreement or award stipulating any age of retirement which is above the age of 60 years is permissible under the Standing Orders. Standing order 32 makes it amply clear that the Standing Orders cannot operate in derogation of any law for the time being in force or to the prejudice of any right under the contract of service, custom or procedure or agreement, settlement or award. Therefore, if the contract of service under an agreement, settlement or award stipulates that the age of retirement should be something other than 60 years, the

> agreement is saved by this Standing order which when read with Standing Order 27 lends credence to the submission of Ms.Buch. If the retirement age was not to be at least 60 years, there was no need for the legislature to mention this figure in Standing Order 27 and the Standing Order could have read as "the age of retirement or superannuation of the workmen may be such age as may be agreed upon between the employer and the workmen by any agreement, settlement or award". By stipulating the age as 60 years in the Standing Order, obviously the Legislature meant that the minimum age of retirement would be 60 years."

Perusal of the above paragraphs from the judgment of the learned Single Judge shows that according to the learned Single Judge the age of retirement fixed by an agreement between the parties will prevail over the age of 60 years which is prescribed by the Model Standing Order no.27 only

if the age of retirement fixed by the agreement is higher. Plain reading of the judgment of the learned Single Judge shows that the construction placed by the learned Single Judge on Model Standing order no.27 results in addition words to the Model Standing order no.27. The settled principle of law is that the interpretation of a provision which results in addition of words can be resorted to only on recording of a finding that reading the provision literally results in absurdity or to an extremely unjust situation. In the judgment in the case of “Engineering Workers' Association Vs. J.D.Jamdar, Member Industrial Court & others” we do not find any finding being recorded by the learned Single Judge that reading the provision of Model Standing order no.27 literally leads to any absurd situation or leads to manifest injustice. The Model standing order no.27 in clear terms lays down that age of retirement of workmen may be 60 years or it can be such other age as may be

agreed between the parties by an agreement. It is thus clear that age of retirement can be 60 years only if there is no contract which is to the contrary between the parties. By the construction placed by the learned Single Judge on Model Standing order no.27, the learned Single Judge has added words to the provisions of Model Standing order no.27 that the age of retirement specified in the agreement between the parties will prevail over the age specified in the Model Standing order no.27 only if the age of retirement specified in the agreement is more than 60 years. The settled law is that it is contrary to all rules of construction to read words into an enactment unless it is absolutely necessary to do so. Therefore, before placing a construction on a provision which results in addition of words, the Court will have to say why it is absolutely necessary to construe the provision in that manner. The Supreme Court has considered as to what should be the approach of

the Court in interpreting the provisions of any statute in its judgment in the case of “Unique Butyle Tube Industries (P) Ltd. Vs. U.P.Financial Corporation and others, (2003)2 Supreme Court Cases 455”. Paragraphs 11 to 14 of that judgment, in our opinion, are relevant, they read as under:-

> “11.It is a well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said, “Statues should be construed, not as theorems of Euclid”, Judge Learned

Hand said, “but words must be construed with some imagination of the purposes which lie behind them” (See Lenigh Valley Coal Co. V. Yensavage.) This view was reiterated in Union of India V. Filip Tiago De Gama of Vedem Vasco De Gama (SCC p.284 para 16).

12. In D.R.Venkatachalam V. Dy.Transport Commr. It was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted in somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

13. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to

amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. V. P.N.B.Capital Services Ltd.) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in N.Narasimhaiah V. State of Karnataka. In State of Karnataka V. D.C.Nanjudaiah the period was further stretched to have the time period run from the date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6(1), but also by a non-prescribed period. The same can never be the legislative intent.

14. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole – appear to be

well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statue. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J., in Artemiou V. Procopiou (All ER p.544-I) “is not to be imputed to a statute if there is some other construction

> available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke V. IRC where at AC p.577 he also observed: (All ER p.664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."] Therefore, the High Court's conclusions holding proceedings under the U.P.Act to be in order are indefensible."

In our opinion, therefore, it is clear that the learned Single Judge in her judgment in the case of "Engineering Workers' Association Vs. J.D.Jamdar, Member Industrial Court & others" was not right in placing construction on Model Standing Order no.27 which results in addition of words to that provision. In our opinion,

therefore, that judgment does not lay down law which can be called good law. We hereby therefore, overruled that judgment.

4. So far as the Model standing order no.32 is concerned, it is not necessary for us to consider that provision, because in view of the provisions of Model standing order no.27 the position is clear that the age of retirement mentioned in that provision will apply only if there is no other age of retirement mentioned in the agreement between the parties. Perusal of the judgment of the learned Single Judge in the case “Engineering Workers' Association Vs. J.D.Jamdar, Member Industrial Court & others” shows that the learned Single Judge has, in support of the view that she has taken, relied on the judgment of the learned Single Judge in the case “The Indian Tobacco Company Ltd. Vs. The Industrial Court & others”. Perusal of that judgment shows that the learned Single Judge in that case was considering

the provisions of Model Standing Order no.4-A and not Model standing order no.27. In our opinion, this case turns on the language employed in the Model Standing Order no.27, and therefore, the judgment of the learned Single Judge in the case “The Indian Tobacco Company Ltd. Vs. The Industrial Court & others” as also the judgment of the Supreme Court in the case between “Western India Match Company Ltd. And Workmen, 1973 II L.L.J. 59” are not relevant. We may mention here that in so far as the Model Standing order no.32 is concerned, our attention was invited by the learned Counsel appearing for respondent no.1 to the judgment of the Division Bench in the case “Pune Municipal Corporation & others vs. Dhananjay Prabhakar Gokhale, 2006 II CLR 105” referred to above, where construction different from the one placed by the learned Single Judge in the case “The Indian Tobacco Company Ltd. Vs. The Industrial Court & others” on Model Standing order no.32 has been accepted by the Division

Bench. However, as observed above, in view of the clear language employed by the Model Standing order no.27, it is not necessary for us to consider Model Standing order no.32.

5. It was contended, as observed above, on behalf of the appellant that the contract of employment between the appellant and the respondent no.1 which prescribed the age of retirement as 58 years for class III employees is void because it is contrary to the provisions of Section 23 of the India Contract Act and reliance is placed on the judgment “Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguli & Anr., 1986 II CLR 322.”. In our opinion, the submission is devoid of any merit. Prescribing age of retirement as 58 years for a class of employees can by no stretch of imagination be said to be opposed to any public policy. In any case, the Model standing order no.27 which according to the appellant is law the

on the point itself allows a different age of retirement being agreed upon between the parties. In our opinion, therefore, the submission has no substance.

6. We find that the view that has been taken by the Industrial Court as also the learned Single Judge is the correct view of the provisions of the Model Standing order no.27 and therefore, it does not call for any interference at our hands. Appeal, therefore, fails and is disposed of. The appellant shall pay cost of this petition.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)